IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1496 OF 2005

Camchandra Nagu Ghadi & Ors. .. Appellants

Versus

Uttam Waman Vilkar @ Kadam .. Respondent

Mr.C.S.Joshi for appellants

Mr.A.S.Khandeparkar i/b. M/s.Khandeparkar & Associates for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 1st August 2007.

P.C.

. On this second appeal, notice was issued by this Court. At that time a plea was raised

that an order passed on 26th March 1988 has attained finality.

2. Mr.Joshi appearing for appellant - original defendants in the suit filed by the respondent submits that the lower appellate court while decreeing the suit has erroneously refused to rely upon the order dated 26th March 1988, that has gained finality. His submission is that in the decision of Additional Tahsildar and A.L.T. Malvan, a copy of which is produced at (Exh.32 and 36). has held that the respondent was not in possession of the suit land and was not cultivating the same. A postal letter was pressed into service, coupled with the order of sale of the suit land dated 23rd January 1971 to urge that the respondent plaintiff was not interested in cultivating the land. Consequently, there was no occasion for decreeing the suit filed by respondent plaintiff, claiming perpetual injunction against present appellants,

restraining them from in any manner obstructing the peaceful possession of the suit land.

3. On the other hand Mr.Khandeparkar appearing for respondent plaintiff, states that the section 32-M certificate produced at Exh.84 pertains to land bearing S.No.64 Hissa No.5. This is the suit land. After inviting my attention to paras 11 to 13 of the impugned judgement and decree of the lower appellate court, Mr.Khandeparkar heavily relied upon the finality attained by this 32-M certificate under the Bombay Tenancy and Agricultural Lands Act, 1948. He submits that the Civil Court has no authority to go behind such certificate and decide its validity and legality. That can only be done by the authority exercising powers under Tenancy Act. In this behalf he placed strong reliance upon a decision of the Supreme Court in the case of Sau Saraswatibai Trimbak Gaikwad Vs. Damodhar D.Motiwale reported in A.I.R. 2002 S.C.

1568. He also placed reliance upon a decision of learned Single Judge of this Court in W.P.4867 of 1986 decided on 7th October 2006, now reported in 2007(1) M.L.J. 467. (Ramu Pandu Gavade since deceased by his heirs and L.rs. Vs. Ramchandra Vishnu Kulkarni, since deceased by his heirs and L.Rs.)

4. He contends that a learned Single Judge has taken a view in a decision in the case of Jagu Tukaram Waghamale Vs. Dnyandeo Bala Waghmale, since deceased by his heirs and L.Rs. reported in 2003(2) BOM.C.R. 465 that the Civil Court could not have referred the issue regarding validity and legality of the certificate issued under section 32-M of the Tenancy Authorities under section 85-A of the Tenancy Act, as that is permissible only by resorting to the proceedings under the Tenancy Act and not by this mode of reference. In these circumstances and considering the documents placed on record so

also the order dated 26th March 1988 having been set aside on 5th March 2004, according to Mr.Khandeparkar, the lower appellate court committed no error in decreeing the suit and restraining present appellant from disturbing respondent's possession in respect of suit land.

5. With the assistance of Mr.Joshi and Mr.Khandeparkar, I have perused the judgement of the lower appellate court and that of the trial court so also the order dated 26th March 1988, a copy of which is annexed to this paperbook.

6. I am in agreement with Mr.Khandeparkar, inasmuch as the order dated 26th March 1988 has not gained finality as contended by Mr.Joshi. In para 13 of the lower appellate court's order it has specifically observed that the order of Additional Tahsildar has been set aside by the S.D.O. Kankavli on 8th March 2004. The matter is remanded back for fresh enquiry. He also

relies upon the certificate issued under section 32-M of the Tenancy Act (Exh.84) and the decisions of the Supreme Court and this Court referred to above.

7. In these circumstances, the lower appellate court rendered and in my opinion rightly so, the finding that the plaintiff has proved is exclusive ownership and title with regard to the suit property.

8. On the issue of possession, the lower appellate court has taken into consideration the 7/12 extracts pertaining to the suit land and the entries therein, which support the oral testimony of the plaintiff. On this basis it is held that the possession of the suit land is proved by respondent - plaintiff.

9. Reliance then, on some postal letter (Exh.67) and the order of 26th March 1988 pail

into insignificance. Once the oral and documentary evidence on record so also the finality attached to the certificate under section 32-M in law, is pointing out to the claim of exclusive ownership and possession, then, the trial court was in error in dismissing respondent's suit. That error has been corrected by the first appellate court and its judgement and order is not vitiated in any manner. This is not a court of further appeal. The limited jurisdiction under section 100 of C.P.C. can be exercised only if there is substantial question of law raised. That plea of substantial question of law was based upon the order passed on 26th March 1988. That having been set aside, in my view, the second appeal is devoid of any merit and it deserves to be dismissed and is accordingly dismissed.

10. In the light of dismissal of the second appeal, C.A.No.2132 of 2005 does not survive and

the same is dismissed as such.

(S.C.DHARMADHIKARI, J)